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OMSAPC ADVISORY CIRCULAR

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR AND WASTE MANAGEMENT

A/C NO. 76

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PAGE 1 OF 4 PAGES

Subject: Compliance with the Requirements of Sections 202(a)(4) and
206(a)(3) of the Clean Air Act

I. Purpose

This advisory circular provides guidance to manufacturers on the policy that EPA will apply for the 1979 model year with respect to sections 202(a)(4) and 206(a)(3) of the Clean Air Act, as amended. These sections of the Clean Air Act place the burden on the manufacturers to establish that emission control systems or elements of design used in new motor vehicles or motor vehicle engines do not cause an unreasonable risk to the public health, welfare, or safety before 1979 or later model year certificates of conformity may be issued.

II. Background

A. On August 7, 1977, the Clean Air Act Amendments of 1977 were enacted. Section 202(a)(4)(A) of the Act, as amended, provides that:

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection (section 202(a)) if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

B. Section 206(a)(3)(A) of the Act, as amended, places the burden of proof for demonstrating compliance with the requirements of section 202(a)(4) of the Act on the manufacturer. That section provides that:

(3)(A) A certificate of conformity may be issued under this section (section 206) only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to the applicable requirements of section 202(a)(4).



Section 206(a)(3)(B) expressly authorizes the Administrator to "require a manufacturer ... to conduct such tests and provide such information as is necessary to carry out [section 206(a)(3)(A)]."

C. The current motor vehicle certification regulatory provisions that pertain to health effects of unregulated pollutants (40 CFR 86.078-5 and 86.408-78) do not adequately reflect these newly mandated Clean Air Act provisions.

D. During model years prior to the 1979 model year, manufacturers were required (40 CFR 86.078-5 and 86.408-78) to measure unregulated pollutants caused by emission control systems to determine if the system had caused an increase in the emissions of such pollutants. Although the manufacturer was not required to submit the actual data to EPA as a condition of certification, the measurements were nonetheless required to be made and an affirmative statement supplied to EPA to the effect that the system did not cause increases in noxious or toxic substances. This statement was required to be made before certificates of conformity could be issued. Therefore, manufacturers have data available on the emissions of unregulated pollutants from their vehicles or engines.

E. This advisory circular is being issued to provide guidance to manufacturers on the policy that EPA will apply for the 1979 model year in seeking to implement sections 206(a)(3) and 202(a)(4) of the Act. EPA fully intends to develop a more detailed, rigorous policy for application to 1980 and later model year vehicles and engines.

III. Applicability

This advisory circular applies to 1979 model year light-duty vehicles, light-duty trucks, heavy-duty engines, and motorcycles.

IV. Discussion

A. Section 206(a)(3) of the Act specifically mandates that manufacturers must satisfy EPA that emission control devices, systems or elements of design for which certification is requested comply with the requirements of section 202(a)(4).

B. Due to the lack of lead time before the beginning of the 1979 model year, EPA will accept for the 1979 model year an affirmative statement from the manufacturer to the effect that: (a) he has identified and assessed the pollutants that emanate from his emission controlled engine and vehicle systems and has not identified any unreasonable risks to the public health, or welfare which would result from the use of these systems, and (b) he has assessed the potential for unsafe conditions associated with these engine and vehicle systems and has not identified any unreasonable risks to public safety which would result from the use of these systems. To further aid manufacturers in complying with the Act's mandates in this regard, included in section V of this advisory circular is an example of a statement that EPA would view as acceptable.



C. EPA will not require the submission of methodology and analytical details of the manufacturer's assessment prior to granting certificates. However, §86.078-23(d) requires that the manufacturer make available to EPA upon request a description of the tests performed and the data derived from such tests. Furthermore, as stated above, section 206(a)(3)(B) of the Act expressly authorizes the Administrator to require the manufacturer to perform such tests and provide such information. In light of EPA concerns about the potential effects of diesel emissions and other factors, EPA will likely request within the next few months such test descriptions and data from 1979 model year vehicles and engines and the methodology and analytical details of the manufacturers' health, welfare, and safety assessments. EPA will request this information in order to gain greater insight as to the test procedures and analytical methods manufacturers have used in evaluating the risk due to hazardous emissions from their vehicles or engines. It is anticipated that this review will enable EPA to provide greater guidance to manufacturers as to appropriate test procedures and analytical techniques to use in their risk assessments in the 1980 or subsequent model years.

V. Submission of Manufacturer's Statement to Comply With Section 206(a)(3) of the Act

A. An example of the type of statement that EPA would view as an acceptable satisfaction of the criteria in section 206(a)(3) of the Act for the 1979 model year has been provided below:

"(Manufacturer) states that any element of design, system, or emission control device installed on or incorporated in (manufacturer's) new motor vehicles or new motor vehicle engines, for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of (manufacturer's) information and belief, cause the emission into the ambient air of pollutants in the operation of its motor vehicles or motor vehicle engines which cause or contribute to an unreasonable risk to public health or welfare except as specifically permitted by the standards prescribed under section 202 of the Clean Air Act. (Manufacturer) further states that any element of design, system, or emission control device installed on or incorporated in (manufacturer's) new motor vehicles or new motor vehicle engines, for the purpose of complying with standards prescribed under section 202 of the Clean Air Act, will not, to the best of (manufacturer's) information and belief, cause or contribute to an unreasonable risk to public safety.



"The term pollutant means:

- a. Diesel particulates
- b. Nickel
- c. ~~MT~~ combustion products
- d. Ammonia
- e. Sulfates
- f. Hydrogen sulfide
- g. Hydrogen cyanide
- h. Ruthenium combustion products
- i. Nitrosamines

or any other pollutant which (manufacturer) has identified which can reasonably be expected to be emitted from these vehicles."

B. If, following the manufacturer's assessment of risk associated with his emission control devices, systems, or elements of design, the manufacturer is unable to affirm that there is no unreasonable risk associated with such systems, EPA will view the statutory criteria in section 202(a)(3) of the Act as not having been met. In that event, EPA is precluded by section 206(a)(3) of the Act from issuing a 1979 model year certificate of conformity, and no certificate for that system will be issued.

C. The statement of risk assessment discussed in the advisory circular, and the statements required in §86.079-23(d) should be submitted to the manufacturer's appropriate certification team with the Part II application for certification.

for Michael P. Walsh
Acting Deputy Assistant Administrator
for Mobile Source Air Pollution Control